

Exhibits

TTA13



IN THE UNITED STATES PATENT AND TRADEMARK
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

04-22-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #73

In the Matter Of: Trademark Application No. 76/111835 for
THIS WEEK IN HISTORY AND DESIGN in Classes 9, 16, 41; Published July 3, 2001

AO.COM, LLC,

Opposer,

v.

A&E TELEVISION NETWORKS

Applicant.

Opposition No. 123,817

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202

**MOTION FOR ACCEPTANCE OF ORIGINAL MAILING DATE
AND ALTERNATIVE MOTION TO EXTEND TESTIMONY PERIOD**

Applicant hereby requests that the attached paper be accepted as having been mailed on the original mailing date of April 14, 2003. It is noted:

1. The attached NOTICE OF RELIANCE was prepared for mailing in the undersigned's mailroom on April 14, 2003. The envelope containing this paper (and other papers


CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal service as First Class Mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on the date shown below:

MARIE-ANNE MASTROVITO


Signature

Date April 17, 2003



for the Commissioner of Trademarks) was weighed on the firm's postage scale and a postage meter sticker reflecting the appropriate postage of \$3.95 was affixed to the envelope.

2. Following affixation of the postage, the envelope was hand carried to the United State Post Office on the evening of April 14, 2003 and was deposited in the mail chute inside the Post Office prior to the last pickup of the day.

3. This paper, and other papers in the envelope in question all included a Certificate of Mailing verifying the date of mailing as April 14, 2003.

4. Despite the affixation of the postage to the envelope prior to mailing, the envelope containing this paper was returned to the undersigned firm on April 17, 2003 for postage due. At that time, the postage meter was no longer affixed to the package. Thus, on information and belief, the postage meter stamp either fell off of the package after delivery to the Post Office, or was removed from the envelope during processing by postal machinery.

5. The handling of the mail described in Paragraphs 1 through 3 above, is in keeping with the undersigned's standard daily practice of handling mail for the Commissioner of Trademarks. On information and belief, this practice has never previously resulted in mail being returned for unpaid postage.

6. The Applicant made a good faith effort to dispatch this paper on April 14, 2003 and timely acted with due diligence to comply with all Trademark Office deadlines. Moreover, the failure to accept the paper as timely filed would unfairly prejudice the Applicant.

7. For the reasons above, the Applicant requests that the paper be accepted as having been mailed on April 14, 2003 even though it has been necessary to resend the paper.

8. In the alternative, if the Board denies the motion to accept the original mailing date, the Applicant requests that the Board treat this as a Motion to Extend the Applicant's

Testimony Period for a period of seven days and that the attached Notice of Reliance be accepted into the record.

9. If a fee is necessary for consideration of this Motion, please charge deposit Account No. 01-0035 for the required fee.

Marie-Anne Mastrovito declares that she is the attorney for the Applicant herein, that all statements made herein of his own knowledge are true, and that all statements made on information and belief are believed to be true, and with knowledge that willful false statements and the like are punishable by fine or imprisonment, or both under 18 USC 1001, and may jeopardized the validity of the application or document or any registration resulting therefrom.

Respectfully submitted,

ABELMAN, FRAYNE & SCHWAB


By: MARIE-ANNE MASTROVITO

ABELMAN, FRAYNE & SCHWAB
150 East 42nd Street
New York, New York 10017
(212) 949-9022

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **MOTION FOR ACCEPTANCE OF ORIGINAL MAILING DATE AND ALTERNATIVE MOTION TO EXTEND TESTIMONY PERIOD** was served by first class mail, postage prepaid, this 17th day of April, 2003 upon
Opposer:

Curtis L. Griggs
Managing Director
P.O. Box 2224
Sedona, Arizona 86339


MARIE-ANNE MASTROVITO

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter Of: Trademark Application No. 76/111835 for
THIS WEEK IN HISTORY AND DESIGN in Classes 9, 16, 41; Published July 3, 2001

AO.COM, LLC,

Opposer,

v.

A&E TELEVISION NETWORKS

Applicant.

Opposition No. 123,817

Assistant Commissioner for Trademarks

f record in the referenced

NT'S

d Opposer's Responses to the

ories to Opposer:

NOTICE OF RELIANCE

Opposer: AO. Com, LLC
Trademark: THIS WEEK IN HISTORY LOGO
Applicant: A&E Television Networks
Trademark: THIS WEEK IN HISTORY

April 14, 2003 [Our Ref.: 210723]
MAM:rd

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on the date shown below.

MARIE-ANNE MASTROVITO

Marie Anne Mastrovito
Signature

- (a) Response to Interrogatory No. 1 and related Exhibits A through D.
- (b) Response to Interrogatory No. 5.
- (c) Responses to Interrogatory No. 7 and 8.
- (d) Response to Interrogatory No. 10.
- (e) Responses to Interrogatory Nos. 13 through 16.
- (f) Response to Interrogatory No. 21.

**EXHIBIT NO. 2: OPPOSER'S RESPONSES TO APPLICANT'S
SECOND SET OF INTERROGATORIES**

Pursuant to Rule 2.120(j), Applicant hereby makes of record Opposer's Answers and Responses to the following interrogatories from Applicant's Second Set of Interrogatories to Opposer:

- (a) Response to Interrogatory No. 22.
- (b) Response To Interrogatory No. 25.

EXHIBIT NO. 3:

Pursuant to Rule 2.120(j), Applicant hereby makes of record the Opposer's Responses to Applicant's Third Set of Interrogatories in their entirety.

EXHIBIT NO. 4:

Pursuant to Rule 2.120(j), Applicant hereby makes of record the Opposer's Answer to Applicant's First Request for Admissions in their entirety, the text of the Admission Requests and the Exhibits referred to in the Admission Requests.

EXHIBIT NO. 5:

Pursuant to Rule 2.122(e) Applicant hereby makes of record printouts of third party publications appearing on-line which include uses of the designation **THIS WEEK IN HISTORY** by third parties. Said publications are of general circulation among members of the public and are believed to be available to the general public via the Internet. The publications included in this exhibit are:

(a) Excerpt from **The Michigan Front Page** located at www.thefrontpage-news.com/Paper/thisweek.htm from July 3, 2002.

(b) Excerpt from **Acorn News Service** located at www.acornusers.org/and/arcmag/weekhist.php from July 3, 2002.

(c) Excerpt from **This Week in History** located at www.claxtonenterprise.com/This_Week_In_History.html from July 3, 2002.

(d) Excerpt from **God's World News** located at www.gwnews.com/gwnews/new/kids_timeline.asp from July 3, 2002.

(e) Excerpt from **The Warp** located at www.studentplanet.com/WARP/Vol3Issue12_05_02/05_02_01history1985.htm from July 3, 2002.

(f) Excerpt from **ABC News.com** located at abcnews.go.com/webcasts/samdonaldsonnew/Sam_DayInHistory.html from July 3, 2002.

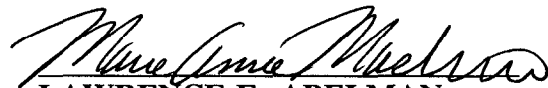
(g) Excerpt from **TSC Traders Club** located at www.tradersclub.com/messagepost/weeklymessages/thisweekinhistory/thisweekinhistory.shtml from July 3, 2002.

(h) Excerpt from **Infinite Matrix** located at www.infinitematrix.net/columns/bisson/ from July 3, 2002.

The referenced excerpts are attached hereto and designated as Exhibit 5. These excerpts are relevant to show that there are numerous third party uses of **THIS WEEK IN HISTORY** in connection with service related to those of the Opposer, that Opposer has allowed Opposer's mark to lose any trademark significance it may have had by its failure to prosecute these, and other, third parties, and that **THIS WEEK IN HISTORY** is weak wording in connection with on-line computer services which should be afforded a narrow range of protection.

The above evidence is offered both in support of Applicant's defense of the Opposition, and in support of the Applicant's counterclaim for cancellation or Registration No. 2454675.

Respectfully submitted,



LAWRENCE E. ABELMAN
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NEW YORK, NEW YORK 10017
(212) 949-9022

*Attorneys for Applicant,
A&E Television Networks*

Date: April 14, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **NOTICE OF RELIANCE** was served by first class mail, postage prepaid, this 14th day of April, 2003 upon Opposer:

Curtis L. Griggs
Managing Director
AO.Com, LLC → P.O. Box 2224
Sedona, Arizona 86339

Marie Anne Mastrovito
MARIE-ANNE MASTROVITO